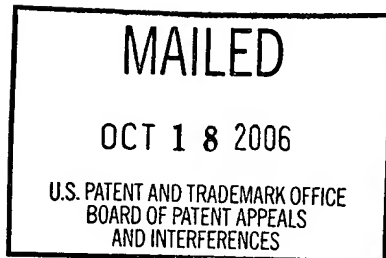


The opinion in support of the decision being entered today was *not* written for publication in and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES



Ex parte WARREN R. WHITE

Appeal No. 2006-0923
Application No. 10/622,157

ON BRIEF

Before OWENS, BAHR, and HORNER, *Administrative Patent Judges*.
OWENS, *Administrative Patent Judge*.

DECISION ON APPEAL

This appeal is from a rejection of claims 12-17 and 32-34, which are all of the pending claims.

THE INVENTION

The appellant claims a mobile cattle hospital for treating pens of cattle close to the pens. Claims 12 and 33 are illustrative:

12. A mobile animal hospital comprising:
a trailer having a frame and at least one set of wheels;
a squeeze chute mounted on the trailer, and wherein the squeeze chute remains stationary in a horizontal plane with respect to the set of wheels; and
wherein the at least one set of wheels is adapted to raise relative to the frame of the trailer such that at least a portion of the frame of the trailer rests at ground level when treating animals.

33. A structure comprising:
a trailer having tongue, a frame, and at least one set of wheels; and
a squeeze chute coupled to the frame of the trailer, and wherein the position of the squeeze chute relative to the tongue is the same for both treating animals using the squeeze chute and relocation of the trailer;
wherein the at least one set of wheels is adapted to raise relative to the frame of the trailer such that at least a portion of the frame of the trailer rests at ground level when treating animals.

THE REFERENCES

Lerma et al. (Lerma)	4,842,316	Jun. 27, 1989
Mollhagen	RE 33,959	Jun. 16, 1992

THE REJECTIONS

The claims stand rejected as follows: claims 12-17, 33 and 34 under 35 U.S.C. § 102(b) as anticipated by Mollhagen, and claim 32 under 35 U.S.C. § 103 as obvious over Mollhagen in view of Lerma.

OPINION

The rejections are affirmed as to claims 12, 13, 15-17 and 32, and reversed as to claims 14, 33 and 34.

Claims 12, 13, 15-17 and 32

The appellant indicates that claims 12, 13, 15-17 and 32 stand or fall together (brief, page 4). Although an additional reference is applied in the rejection of claim 32, the appellant does not provide a substantive argument as to the separate patentability of that claim (brief, pages 7-8). We therefore limit our discussion to one of claims 12, 13, 15-17 and 32, i.e., claim 12. See 37 CFR § 41.37(c)(1)(vii)(2004).

The only element of claim 12 that the appellant argues is missing from Mollhagen is a squeeze chute that remains stationary in a horizontal plane with respect to the set of wheels (brief, page 7).

Mollhagen's squeeze chute (112, figure 3)¹ is mounted on an extension base (108) in communication with the open back end (76) of a back enclosure (3) (col. 7, lines 53-56). When Mollhagen's animal working device is switched from its transport configuration to its working configuration a front enclosure (2)

¹ Mollhagen's item 112 is not mentioned in the specification. However, Mollhagen's figure 3 and the discussion of the squeeze chute in Mollhagen's specification (col. 7, lines 53-53) indicate that item 112 is a squeeze chute, and the appellant refers to that item as a squeeze chute (brief, page 7).

is pulled along rollers away from the back enclosure (col. 6, lines 49-52). Thus, as indicated by a comparison of Mollhagen's figures 2 and 3, during the switching between the transport and working configurations the squeeze chute is moved horizontally with respect to the wheels of the trailer on which the animal working device is mounted.

The appellant's claim 33 requires that the position of the squeeze chute relative to the tongue of the trailer is the same for both treating animals using the squeeze chute and relocation of the trailer. Claim 12, however, does not require that the squeeze chute remains stationary in a horizontal plane with respect to the set of wheels both when treating animals and relocating the trailer. Hence, in view of claim 33, claim 12 reasonably can be more broadly interpreted as encompassing a stationary position of the squeeze chute relative to the wheels during either treatment of animals or relocation of the trailer.

Mollhagen's squeeze chute remains stationary with respect to the trailer's wheels in one position during treatment of animals (figure 3) and in a different position during relocation of the trailer (figure 2). Since claim 12 is open to those positions being different, we are not convinced of reversible error in the examiner's rejection of that claim. Accordingly,

we affirm the rejection of claim 12 and claims 13, 15-17 and 32 that stand or fall therewith.

Claim 14

Claim 14, which depends from claim 12, requires first, second and third gates that are proximate to the front of the trailer and are proximate, respectively, to a first side, a second side and the center of the trailer, and which may be selectively arranged to allow egress of an animal off one of the first and second sides of the trailer after the animal exits the squeeze chute.

The examiner argues that "Mollhagen discloses a first gate 49, a second gate 63 and a third gate 102" (final rejection mailed April 26, 2004, page 3). Mollhagen's gates 49 and 102 are at, respectively, the front of the front enclosure and the rear of the back enclosure (figures 1-3). Gate 63 is at the front of the back enclosure and, therefore, is at the front of the trailer in the transport position and in the middle of the trailer in the animal treatment position (figures 2, 3 and 5). Gates 102 (one on each side of the rear of the back enclosure (figure 4)) never are proximate to the front of the trailer as required by the appellant's claim 14.

The examiner argues that the selective arrangement limitation in claim 14 is a method limitation rather than an

apparatus limitation (answer, page 4). The claim requires that the three gates are structurally configured such that they are capable of being selectively arranged to allow egress of an animal off one of the first and second sides of the trailer after the animal exits the squeeze chute. That claim requirement is a structural limitation of the apparatus. The only gates on the side of Mollhagen's animal working device are gates 102 (figure 4), and those gates are disclosed as providing access to animals in the device (col. 7, lines 36-37). Gates 102 are not disclosed as being capable of animal egress. Even if such egress can take place, the gates are not proximate to the front of the trailer as required by claim 14.

We therefore reverse the rejection of claim 14.

Claim 33

The examiner argues that 1) "the position of [Mollhagen's] squeeze chute relative to the tongue 123 is the same for both treating animals using the squeeze chute and relocation of the trailer (no movement of the tongue relative [sic] to the chute is necessary, as the chute is located at the rear of the trailer and the tongue at the front of the trailer)" (final rejection mailed April 26, 2004, page 4), and 2) "[f]rom Figs. 1-3, it would appear that the position of the squeeze chute relative to the tongue is the same" (answer, page 5). The examiner is

correct that Mollhagen's trailer tongue always is proximate to the front of the animal working device (figure 2) and the squeeze chute always is at the rear of the back enclosure (figure 3). However, the position of the squeeze chute relative to the tongue is not the same for both treating animals using the squeeze chute and relocating the trailer. As indicated by a comparison of Mollhagen's figures 2 and 3, the squeeze chute is closer to the tongue in the transport position (figure 2) than in the animal treatment position (figure 3).

Therefore, we reverse the rejection of claim 33 and its dependent claim 34.

DECISION

The rejection of claims 12-17, 33 and 34 under 35 U.S.C. § 102(b) over Mollhagen is affirmed as to claims 12, 13 and 15-17, and reversed as to claims 14, 33 and 34. The rejection of claim 32 under 35 U.S.C. § 103 over Mollhagen in view of Lerma is affirmed.

Appeal Number: 2006-0923
Application Number: 10/622,157

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a).

AFFIRMED-IN-PART

Terry J. Owens
TERRY J. OWENS)
Administrative Patent Judge)

Jennifer D. Bahr
JENNIFER D. BAHR)
Administrative Patent Judge)

Linda E. Horner
LINDA E. HORNER)
Administrative Patent Judge)

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CONLEY ROSE, P.C.
P. O. BOX 3267
HOUSTON, TX 77253-3267

TJO/jrg